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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,415	08/26/2003	Joseph David Coburn	MPH 03-05	5305

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,415

Applicant(s)

COBURN ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

Detailed Action

Specification

1. The disclosure is objected to because of the following informalities: on page 5 line 11 the reference numeral "25p" does not appear in the drawings.

Appropriate correction is required.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 25p. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear from where the fluid is pumped. Further, it is unclear to

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whether the hand pump is to more specifically limit the pump of claims 1 and 8 or if it is an additional pump.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,743,290 to Locke et al., U.S. Patent No. 5,918,415 to Locke et al. or SU Patent No. 1395236.

Referring to claim 1, Locke et al. '415, Locke et al. '290 and the Soviet patent disclose a liquid feeder comprising, a feed reservoir – proximate item – 17 of Locke '290 – proximate 58 or at 350 of Locke '415, and – proximate 1 or at 9 of the Soviet patent, a feeding cup – at 639 of Locke '290 – at 10 or 218 of Locke '415 and – at 6 of the Soviet patent, a pump – at 17 of Locke '290 – at 138 of Locke '415 and – at 1,3,4,7,9 of the Soviet patent and an overflow trap – proximate 635,661 of Locke '290 – at 10 or 120 of Locke '415 and – at 5,10,11 of the Soviet patent.

Referring to claim 7, Locke '290, Locke '415 and the Soviet patent disclose the feeder includes an externally disposed hand operated pump – at 17 of Locke '290 – at 138 of Locke '415 and – at 1,3,4,7,9 of the Soviet patent, in that the pumps of these references each require the

user to electrically turn on by hand or to manually actuate a valve to allow water to flow to the feeder device.

Claims 2, 4 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by the Soviet patent.

Referring to claim 2, the Soviet patent discloses the feeding cup – at 6 is positioned entirely in the overflow trap – at 5,10,11 – see figure 1.

Referring to claim 4, the Soviet patent discloses a conduit – at 3, for feeding liquid feed to the feeding cup is housed within the overflow trap – see for example figure 1.

Referring to claim 11, the Soviet patent discloses the overflow trap is housed within the feeder – at 5, and includes an accessing port – proximate 11, for removal of contaminants from the feeder, the method including the step of removing feed contaminants from the overflow trap – see for example figures 1-2.

Referring to claim 12, the Soviet patent discloses the feed liquid is stored within a feed reservoir – at 7 protectively housed within the feeder and the overflow trap includes a contaminate container – at 10,11 housed within the feeder and the method includes accessing the contaminate container and removing contaminants while replenishing the feed reservoir with added liquid feed – see for example figures 1-2 and the English abstract.

Claims 3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Locke '415.

Referring to claim 3, Locke '415 discloses feeding ports – see figure 8g and proximate items 218 in figure 34, positioned above a brim of the feeding cup – at 10, providing feeding access to the hummingbird.

Referring to claim 5, Locke '415 discloses the liquid feed and the overflow trap are protectively housed within the feeder and thereby protected from insect intrusion – see for example figures 8g and 33-35.

Referring to claim 6, Locke '415 discloses the feed reservoir and the overflow trap are protectively covered by a removable lid – at 158, or 300 and 351 as seen in figures 8g and 34.

Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by the Soviet patent or U.S. Patent No. 5,784,998 to Manzer.

Referring to claim 8, the Soviet patent and Manzer disclose a method of flushing liquid feed contaminates from a feeder, comprising, pumping liquid feed to the feeding cup – at 6 of the Soviet patent and – at 23 of Manzer, with a pump – at 1,3,4,7,9 of the Soviet patent – see figure 1 of Manzer, and further allowing the liquid feed to be contaminated with contaminants – see for example the English abstract of the Soviet patent and columns 4-10 of Manzer, and flushing the contaminants from the liquid feed by pumping excess liquid feed into the feeding cup so as to cause excess feed containing the contaminants to overflow and be flushed from the feeding cup – see for example figures 1-2 and the English abstract of the Soviet patent and columns 4-12 of Manzer.

Referring to claim 9, the Soviet patent and Manzer disclose the pumping includes manually pumping excess fluid into the feeding cup with a hand operated pump – at 1,3,4,7,9 of the Soviet patent and see figure 1 of Manzer, in that the pumps of these references each require the user to electrically turn on by hand or to manually actuate a valve to allow water to flow to the feeder device.

Referring to claim 10, the Soviet patent and Manzer disclose replenishing the liquid feed reservoir with liquid feed – see for example the English abstract of the Soviet patent and columns 4-12 of Manzer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Locke '290 or Locke '415 as applied to claim 1 above, and further in view of the Soviet patent.

Referring to claim 2, Locke '290 and Locke '415 do not disclose the feeding cup is positioned entirely in the overflow trap. The Soviet patent does disclose the feeding cup – at 6 is positioned entirely in the overflow trap – at 5,10,11 – see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Locke '290 or Locke '415 and add the feeding cup positioned entirely in the overflow trap of the Soviet patent, so as to make the device more compact and easier to transport or store.

Referring to claim 4, Locke '290 and Locke '415 as modified by the Soviet patent further disclose a conduit – at 3 of the Soviet patent, for feeding liquid feed to the feeding cup is housed within the overflow trap – see for example figure 1 of the Soviet patent.

Claims 3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Locke '290 or the Soviet patent as applied to claim 1 above, and further in view of Locke '415.

Referring to claim 3, Locke '290 and the Soviet patent do not disclose feeding ports positioned above a brim of the feeding cup. Locke '415 does disclose feeding ports – see figure 8g and proximate items 218 in figure 34, positioned above a brim of the feeding cup – at 10, providing feeding access to the hummingbird. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Locke '290 or the Soviet patent and add the feeding ports of Locke '415, so as to allow for the feeding cup to be protected from unwanted contaminants while providing access to the feeding cup.

Referring to claim 5, Locke '290 and the Soviet patent as modified by Locke '415 further disclose the liquid feed and the overflow trap are protectively housed within the feeder and thereby protected from insect intrusion – see for example figures 8g and 33-35 of Locke '415.

Referring to claim 6, Locke '290 and the Soviet patent as modified by Locke '415 further disclose the feed reservoir and the overflow trap are protectively covered by a removable lid – at 158, or 300 and 351 as seen in figures 8g and 34 of Locke '415.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manzer as applied to claim 8 above, and further in view of the Soviet patent.

Referring to claim 11, Manzer does not disclose an accessing port for removal of contaminants from the feeder. The Soviet patent discloses the overflow trap is housed within the feeder – at 5, and includes an accessing port – proximate 11, for removal of contaminants from the feeder, the method including the step of removing feed contaminants from the overflow trap – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in

the art to take the device of Manzer and add the accessing port for removal of the contaminants of the Soviet patent, so as to allow for the contaminants to be quickly and easily cleaned from the feeder without contaminating the area surrounding the feeder.

Referring to claim 12, Manzer as modified by the Soviet patent further discloses the feed liquid is stored within a feed reservoir – at 7 protectively housed within the feeder and the overflow trap includes a contaminate container – at 10,11 housed within the feeder and the method includes accessing the contaminate container and removing contaminants while replenishing the feed reservoir with added liquid feed – see for example figures 1-2 and the English abstract of the Soviet patent.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to hummingbird feeders in general:

U.S. Pat. No. 2,878,781 to Wingfield – shows pump

U.S. Pat. No. 4,630,569 to Dieleman – shows overflow to remove contaminants

U.S. Pat. No. 5,062,390 to Bescherer et al. – shows hummingbird feeder

U.S. Pat. No. 5,743,212 to Forjohn – shows pump

U.S. Pat. No. 5,924,382 to Shumaker – shows hummingbird feeder

U.S. Pat. No. 5,947,054 to Liethen – shows hummingbird feeder

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U.S. Pat. No. 5,966,868 to Cox – shows pump

U.S. Pat. No. 5,988,601 to Burgess – shows pump operated by hand

U.S. Pat. No. 6,079,951 to Morton – shows pump

U.S. Pat. No. 6,463,878 to Moody – shows hummingbird feeder

U.S. Pat. No. 6,553,936 to Sasso – shows hummingbird feeder

U.S. Pat. No. 6,659,041 to Curtis – shows hummingbird feeder

7. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



Peter M. Poon
Supervisory Patent Examiner
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